

SERVICE DATE – JULY 31, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1264X

KASGRO RAIL CORP.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
LAWRENCE COUNTY, PA.

Digest:¹ This decision permits Kasgro Rail Corp. to discontinue rail service over approximately four miles of rail line in Lawrence County, Pa., subject to standard employee protective conditions.

Decided: July 26, 2018

On April 13, 2018, Kasgro Rail Corp. (Kasgro), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to discontinue rail service over approximately four miles of rail line in Lawrence County, Pa., owned by EASX Corporation (EASX). The four miles of line consists of three segments (collectively, the Line): the New Castle Branch, the Big Run Branch, and the Sample Spur. The New Castle Branch begins at New Castle Monumented Base Line (MBL), at Survey Station 10+00, opposite the former Pittsburgh and Lake Erie Railroad's (P&LE) Main Line MBL Survey Station 2580+10 and extends in a generally northeasterly direction to the former P&LE Valuation Station 146+10. (Kasgro Pet. 1.) The Big Run Branch begins at P&LE New Castle Branch Baseline of Survey, at Survey Station 84+44, and extends in a generally southwesterly direction to a connection with CSX Transportation, Inc. (CSXT). (Id.) The Sample Spur begins at Valuation Station 2+00 off of CSXT's main line between Cumberland, Md., and Willard, Ohio, and continues in a generally northward direction to Valuation Station 40+75.7, where it connects with New Castle Industrial Railroad (NCIR), formerly known as ISS Rail, Inc. (ISS). (Id.)

Notice of the exemption proceeding was served and published in the Federal Register on May 3, 2018 (83 Fed. Reg. 19,592). No comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

EASX, a common carrier, acquired the Line in 1993. See EASX Corp.—Acquis. & Operation Exemption—Three Rivers Ry. & CSX Transp., Inc., FD 32346 (ICC

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

served Sept. 10, 1993); EASX R.R.—Purchase & Operation Exemption—CSX Transp., Inc., Line in Pa., FD 32412 (ICC served Dec. 29, 1993). In 2000, Kasgro received authority to lease and operate over the Line. See Kasgro Rail Corp.—Lease & Operation Exemption—EASX Corp. & Rail Servs. Corp., FD 33882 (STB served June 22, 2000). Kasgro’s lease agreement required it to use ISS, and later NCIR, to operate the Line (unless EASX consented to a change). NCIR continues to provide rail service on the Line as the successor to ISS. (Kasgro Pet. 2.) Though Kasgro’s lease ended in 2010, “Kasgro and EASX have continued to perform in accordance with the lease terms on a month-to-month basis through the present.” (Id. at 2-3.) On April 3, 2018, Kasgro notified EASX that it intends to exit the lease 30 days after the Board authorizes Kasgro to discontinue service. (Id. at 3.)

There are five shippers on the Line: Tanner Industries, R.W. Elliott Holdings, New Castle Recycling, PSC Metals, and Consolidated Containers. (Id. at 6; id., Ex. A, at 1.) Kasgro asserts that there will be no change in service to shippers resulting from Kasgro’s discontinuance of service, because “EASX will continue to have a residual common carrier obligation, which EASX will satisfy through the continuing operations of NCIR over the Line.” (Id. at 3.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101, and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of Kasgro’s proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§ 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by the exemption.

The Board also finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. Shippers currently served by Kasgro would continue to be served by EASX, through NCIR, once Kasgro is granted discontinuance authority.² Accordingly, the discontinuance would not result in an interruption of service, and no shippers served by the Line would be disadvantaged when Kasgro ceases operations. To ensure that the shippers are informed of this decision, however, Kasgro will be directed to serve a copy of this

² Kasgro states that NCIR will provide the same service as the contract operator for EASX as it has for Kasgro during the time Kasgro has leased the Line from EASX and as it did for EASX prior to the Kasgro lease. (Kasgro Pet. 6.)

decision on the five shippers on the Line within five days of the service date of this decision and to certify to the Board that it has done so.³

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Therefore, as a condition to granting this exemption, we will impose on Kasgro the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider trail use requests under 16 U.S.C. § 1247(d) or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.

Because there would be environmental review during any subsequent proceeding for authority to abandon, this discontinuance proceeding does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by Kasgro over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. Kasgro is directed to serve a copy of this decision on Tanner Industries, R.W. Elliott Holdings, New Castle Recycling, PSC Metals, and Consolidated Containers and certify to the Board that it has done so within five days of the service date of this decision.

3. Petitions to reopen and petitions to stay must be filed by August 15, 2018.⁴

4. This exemption will be effective on August 30, 2018.

By the Board, Board Members Begeman and Miller.

³ Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

⁴ The Board permits the filing of an offer of financial assistance (OFA) in both abandonment and discontinuance proceedings. Under the rules that became effective July 29, 2017, a party wishing to file an OFA must first file a formal notice of intent (NOI) to do so, which must include a preliminary financial responsibility showing within 10 days of the Board's publication of the exemption notice in the Federal Register. 49 C.F.R. § 1152.27(c)(1)(i). Because no NOIs were filed by the May 11, 2018 deadline, OFAs will not be permitted here.